

REMARKS

Claims 1-27 remain pending in the application and stand rejected.

In the Office action, claims 1-17 and 19-27 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Appleman et al. (US 6,539,421 B1, hereinafter "Appleman") in view of Metso et al. (US 5,920 826, hereinafter "Metso"). Claim 18 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Appleman in view of Metso and in further view of Isaacs et al. (US 2002/0026483 A1, hereinafter "Isaacs"). The applicants traverse the rejections and request reconsideration.

This application relates to apparatus, systems, methods and computer software for facilitating real-time communication using text messaging, e.g., short message service (SMS) and the like. Particular preferred embodiments enhance text messaging in group chat situations by ensuring temporal arrangement of chat messages. *See Specification, page 4, lines 1-23.* In that regard, provided is a message creation reference (MCR) that is not tied to the sending or receipt of a message, but to when the message is created. For example, an MCR for a message may be created responsive to inputs received via a user input device as the user begins to create a message, whether as an original message or responsive to a received message. Transmitted and received messages may then be arranged based upon respective MCRs providing improved sequential ordering of messages for all participants in the group chat session.

To establish a prima facie case of obviousness, and hence to find claims 1-27 unpatentable under 35 U.S.C. § 103(a), three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the

prior art reference (or references when combined) must teach or suggest all of the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not be based upon applicant's disclosure. MPEP at § 2142.

Turning to the rejection of the claims under 35 U.S.C. § 103(a), the applicants submit that the combination of Appleman in view of Metso fails to establish a *prima facie* case of obviousness against the independent claims 1, 9 and 19, because, *arguendo*, even if one of skill in the art were motivated to combine these references as suggested in the Office action the combination does not teach each and every limitation of the claims as required by § 103(a). MPEP at § 2142.¹

The applicants agree with the examiner that Appleman fails to teach or suggest arranging real-time communication messages based upon a message creation reference. The applicants do not otherwise address the characterization of Appleman put forward by the examiner in the office action, and reserve the right to traverse such characterization.

The applicants traverse the contention that Metso teaches the claimed message creation reference. Metso, as noted by the examiner, only ever teaches sorting of messages based upon either "time of sending or time of receipt." *Metso, col. 10, lines 49-52*. As the applicants have described, a problem with sorting based upon transmission or receipt of the message is that if there is a delay in transmission or receipt of the message the temporal arrangement of the message, particularly in a group chat session, may be compromised. *See specification, page 2, line 10 - page 3, line 2*. Because Metso teaches only sorting of messages based upon a time of sending or a time of receipt indication, it fails to teach or suggest the claimed message creation reference. Likewise, the proffered combination of

¹ Because at least this aspect of a *prima facie* case of obviousness has not been met, the applicants do not address the questions of motivation to combine or success of the combination, but reserve the right to traverse these issues if necessary.

Appleman in view of Metso fails to teach or suggest apparatus, systems, methods or computer software facilitating real-time communication services that incorporate the creation and usage of a message creation reference. For at least these reasons, claims 1, 9 and 19 are allowable over the combination of Appleman in view of Metso.

The remaining claims 2-8, 10-18 and 20-27 are dependent directly or indirectly from the independent claims 1, 9 and 19, and therefore are also allowable over the combination of Appleman in view of Metso. Therefore, the applicants do not address the examiner's characterization of the Isaacs reference or the motivation to combine this reference with Appleman or Metso, but reserves the right to traverse the same if necessary.

The applicants submit the examiner has not established a *prima facie* case of obviousness under 35 U.S.C. § 103(a). Therefore, applicants submit claims 1-27 are allowable, and such action is solicited. The examiner is encouraged to contact the applicants' undersigned attorney with any questions regarding this response or the application as a whole. Since the application is in a condition for allowance, such action is requested at the examiner's earliest convenience.

If there are any additional fees or refunds required, the Commissioner is directed to charge or debit Deposit Account No. 13-2855. Applicants respectfully request reconsideration and withdrawal of the rejection of the claims at issue and allowance thereof.

Respectfully submitted for,
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